

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ST. PAUL FIRE & MARINE INSURANCE CO.
a/s/o HUDSON STREET, LLC,

Docket No. 08-CV-00465 (BSJ)

Plaintiff,

- against -

ARCHITRON DESIGNERS AND BUILDERS, INC.,
AYN ENTERPRISES INC., GJC STRUCTURES, P.E.,
P.C. and JOSEPH EDWARD VANCE ARCHITECT,

Defendants.
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MEMORANDUM OF LAW

Of Counsel:

Daniel A. McFaul, Jr.

L'ABBATE, BALKAN, COLAVITA & CONTINI, L.L.P.

ATTORNEYS AT LAW

1001 FRANKLIN AVENUE

GARDEN CITY, N.Y. 11530

(516) 294-8844

POINT I

ARCHITRON'S MOTION FOR SUMMARY JUDGMENT

While Vance believes Architron is the party responsible for plaintiff's damages, it recognizes Architron's motion for summary judgment has a basis in the law cited by counsel. Essentially, Architron was given a Release from the plaintiff and wishes for summary judgment to be granted as well as the dismissal of all cross-claims for contribution and indemnification.

POINT II

VANCE'S MOTION SHOULD BE DECIDED WITH ARCHITRON'S MOTION

Vance has a similar situation as it was given a Release by plaintiff's subrogor, Hudson Street, LLC ("Hudson"), releasing Vance and settling all claims with Vance in the sum of Thirty Five Thousand (\$35,00.00) Dollars. There was no language in Vance's General Release preserving any subrogation rights and there was no limitation in the Release for any uninsured claims. Despite this Release, St. Paul Fire & Marine Insurance Company ("St. Paul") commenced the instant action against Vance.

Vance's motion was submitted to the Honorable Sandra J. Feuerstein of the Eastern District of New York on June 22, 2006. Annexed to the Affidavit as Exhibit "A" is Vance's Notice of Motion dated June 22, 2006. As you are aware, this case was transferred to the Southern District of New York and filed on January 18, 2008. We followed up with Justice Feuerstein by correspondence dated December 12, 2006, October 19, 2007 and most recently to Your Honor on May 27, 2008. Since it has been nearly two (2) years since the motion was submitted, we ask the Court to decide Vance's motion with Architron's motion.

If the Court does not have all of the motion papers originally submitted in 2006 due to the transfer of the file to the Southern District of New York, please advise Vance's attorney of the best method to resubmit the documentation.

CONCLUSION

It is respectfully requested that the Court decide Vance's motion, simultaneously with Architron's motion, together with such other, further and different relief as this Court deems just and proper under the circumstances.

Dated: Garden City, New York
June 3, 2008

Respectfully submitted,

L'ABBATE, BALKAN, COLAVITA
& CONTINI, L.L.P.

By: 

Daniel A. McFaul, Jr.

Attorneys for Defendant
Joseph Vance Architects s/h/a
Joseph Edward Vance Architect
1001 Franklin Avenue
Garden City, New York 11530
(516) 294-8844

TO:

Robert C. Sheps, Esq.
Sheps Law Group, P.C.
Attorneys for Plaintiff
35 Pinelawn Road, Suite 106E
Melville, New York 11747
(631) 249-5600
File No. 4368

Marina A. Spinner, Esq.
Nicoletti Gonson & Spinner, LLP
Attorneys for Defendant
Architron Designers and Builders, Inc.
546 Fifth Avenue, 20th Floor
New York, New York 10036
(212) 730-7750
File 10111.00220

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